

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 414 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

MOHANBHAI VIRABHAI PRAJAPATI

Versus

CHELABHAI G.PRAJAPATI & OTHERS

Appearance:

MR DIPEN DESAI FOR SK JHAVERI for Petitioner
NOTICE SERVED for Respondent No. 1
MS KUSUM M SHAH for Respondent No. 2
MR RC KODEKAR for Respondent Nos.3,4 & 5

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 17/02/2001

ORAL JUDGEMENT

Heard learned advocate for the petitioner
Mr.Dipen Desai for Mr.S.K.Jhaveri, learned advocate for

the respondent No.2, Ms.Kusum M. Shah and learned Addl. Public Prosecutor for respondent Nos.3,4 and 5, Mr.R.C.Kodekar. Respondent No.1, though served, did not remain present either personally or through advocate.

2. According to petitioner, he had purchased the land bearing Survey Nos.33 and 34 situated at Village Rajosana by a Sale Deed dated 29-1-1988 from Bhudabhai Shivram Suthar together with pucca well, room and tress standing thereon and he is having the exclusive possession, use and enjoyment of property of survey No.33 and the well and room. An entry to that effect was posted bearing Hak Patrak Entry No.539 on 30-1-1988. It is the further say of the petitioner that by a sale deed dated 10-6-1988 the respondent No.1 had purchased the said land bearing Survey Nos.32, 35 and 37 of Village Rajosana from Babulal Kalidas Suthar, Rameshchandra Kalidas Suthar, Babuben Suthar and Pashiben. It is further the case of the petitioner that though these vendors had nothing to do with survey No.33, a false statement was incorporated in the Sale Deed stating that 1/2 share in the pucca well together with guntha surrounding land, the room and trees in survey No.33 was also sold and the respondent No.2 who was the then Talati of Village Rajosana in conspiracy with respondent No.1 posted Hak Patrak entry No.552 on 11-6-1988 making a false declaration as aforesaid in violation of the provisions of sec.135-D of the Bombay Land Revenue Code without any notice to petitioner and same has been certified by the certifying authority. Petitioner came to know about the said entry in March, 1990 and immediately thereafter he preferred an appeal against the said entry before the Deputy Collector, Palanpur being R.T.S. Appeal No.17 of 1990 wherein present petitioner also filed one affidavit dated 7-5-1999 with certain allegation regarding specific contention that notice under sec.135-D of the Bombay Land Revenue Code had never been served upon petitioner or his father or Dhuda Shivram and that the thumb impression and signatures appearing in the office copy of alleged notice under Sec.135-D were forged one and notice is also got up subsequently. He requested the authority to call for the expert opinion to that effect, but petitioner was not permitted to do so. The authority did not do anything though specifically requested.

2.1 The petitioner preferred R.T.S. Revision Application No.32 of 1990 before the Collector, Banaskantha. The Collector did not accept the request made by the petitioner for initiating appropriate proceedings under Sec.340 of the Code of Criminal

Procedure by observing that it was beyond his jurisdiction to enquire into the allegation of notice under Sec.135-D of the Bombay Land Revenue Code and commission of fraud. Against that, present petitioner preferred revision application being S.R.D./HKP/BNS/11/92 before the Special Secretary (Appeals), Revenue Department, Government of Gujarat. After hearing the learned advocates appearing for the parties, Special Secretary (Appeals) passed an order on 12-4-1993. The said authority had also ignored the same and hence, the petitioner instituted Regular Civil Suit No.10 of 1993 in the Court of Civil Judge (Sr.Divn.) at Palanpur claiming declaration in respect of rights over well in Survey No.33 and as per the learned counsel for the petitioner, the same is pending and awaiting for final disposal.

3. In view of the above facts and circumstances, the dispute between the parties as to whether the notice under Sec.135-D of the Bombay Land Revenue Code has been served or not or whether the signatures thereupon are of the present petitioners or the same are forged are the questions which are required to be kept open till final disposal of the Regular Civil Suit or till final disposal of legal remedies which have been availed by the parties. Therefore, This Court cannot direct the authority for initiating proceedings under Sec.340 of the Cr.P.C. and to institute complaint against the respondent Nos.1 and 2 under requisite section of Indian Penal Code.

4. Looking to the above facts and circumstances and keeping in the mind the fact that the suit is pending and awaiting for final disposal, it is not advisable to say anything on merits regarding the points which have been raised by the learned counsel for the petitioner and same are required to be kept open. Whatever observation that is made by this Court in this order is of prima-facie nature and it will not come in the way of the parties while deciding the proceedings which are pending between the parties in the trial Court and other Courts.

5. With the above observation, this petition accordingly stands disposed of. Rule is discharged. Ad-interim relief stands vacated.

(R.P.DHOLAKIA, J.)

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